

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ORLANDO JOHNSON,

Plaintiff,

No. 2:21-cv-1450-KJM-EFB P

v.

UNKNOWN,

Defendant.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), he has filed an application to proceed in forma pauperis (ECF No. 7).¹

Application to Proceed in Forma Pauperis

The court has reviewed plaintiff's application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

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¹ Accordingly, the September 23, 2021 findings and recommendations (ECF No. 6) issued after plaintiff failed to timely pay the filing fee or seek leave to proceed in forma pauperis in accordance with the court's August 16, 2021 order are vacated.

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the “short and plain statement” requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

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Screening Order

2 Plaintiff's complaint is devoid of factual allegations and cannot survive screening. It
3 makes the bald claim that "Doe" defendants One through Four violated plaintiff's Eighth
4 Amendment rights when they "failed to provide treatment, delayed treatment, made medical
5 decisions based on non-medical factors, and ignored obvious conditions even though plaintiff has
6 serious medical conditions." ECF No. 1 at 3. It neither identifies a serious medical need nor
7 specifies how any defendant responded to that need with deliberate indifference. The complaint
8 also fails to specify how plaintiff was harmed or why he is due any form of relief. Plaintiff's
9 request for relief sheds no light on the matter, cryptically listing, "Injunctive[,] Compensatory/
10 Punitive" under the "Request for Relief" heading. *Id.* at 6. For the following reasons, the
11 complaint is dismissed with leave to amend.

12 First, the use “Doe” defendants is generally disfavored in the Ninth Circuit. *Gillespie v.*
13 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Unknown persons cannot be served with process
14 until they are identified by their real names and the court will not investigate the names and
15 identities of unnamed defendants.

16 Second, plaintiff has not pleaded sufficient facts to state a proper claim for relief.
17 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice
18 and state the elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*,
19 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity
20 overt acts which defendants engaged in that support plaintiff's claim. *Id.* To succeed on an
21 Eighth Amendment claim predicated on the denial of medical care, a plaintiff must establish that
22 he had a serious medical need and that the defendant's response to that need was deliberately
23 indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *see also Estelle v. Gamble*, 429
24 U.S. 97, 106 (1976).

25 Last, plaintiff's request for relief needs to be more specific. Rule 8(a)(3) requires a
26 complaint to contain a demand for judgment for the relief sought. In any amended complaint,
27 plaintiff must include a request for relief, such as monetary damages or specific injunctive relief.

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1 Leave to Amend

2 Plaintiff is cautioned that any amended complaint must identify as a defendant only
3 persons who personally participated in a substantial way in depriving him of his constitutional
4 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the
5 deprivation of a constitutional right if he does an act, participates in another's act or omits to
6 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also
7 include any allegations based on state law that are so closely related to his federal allegations that
8 "they form the same case or controversy." See 28 U.S.C. § 1337(a).

9 The amended complaint must also contain a caption including the names of all defendants.
10 Fed. R. Civ. P. 10(a).

11 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See
12 *George*, 507 F.3d at 607. Nor, as mentioned above, may he bring unrelated claims against
13 multiple defendants. *Id.*

14 Any amended complaint must be written or typed so that it is complete in itself
15 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
16 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
17 earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114
18 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter
19 being treated thereafter as non-existent.") (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
20 1967)).

21 Any amended complaint should be as concise as possible in fulfilling the above
22 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
23 background which has no bearing on his legal claims. He should also take pains to ensure that his
24 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing
25 and organization. Plaintiff should carefully consider whether each of the defendants he names
26 actually had involvement in the constitutional violations he alleges. A "scattershot" approach in
27 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

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Conclusion

Accordingly, it is ORDERED that:

1. The September 23, 2021 findings and recommendations (ECF No. 6) are vacated;
 2. Plaintiff's application to proceed in forma pauperis (ECF No. 7) is granted;
 3. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith;
 4. Plaintiff's complaint (ECF No. 1) is dismissed with leave to amend within 30 days from the date of service of this order; and
 5. Failure to comply with any part of this this order may result in dismissal of this action.

DATED: November 8, 2021.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE